

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOMMY JERMAL WALKER,

Defendant.

No. C13-3061-LRR
No. CR12-3025-LRR

ORDER

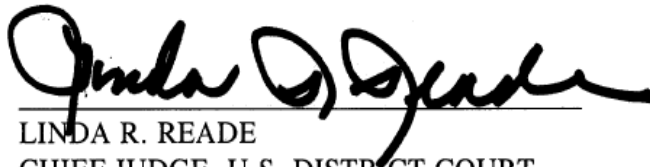
This matter appears before the court on the defendant's motion to correct sentence (civil docket no. 1). The defendant filed such motion on November 22, 2013.

In the instant motion, the defendant did not cite or rely on a particular rule or statute that authorizes the court to correct his sentence. Because the defendant is in federal custody and another statute specifically addresses the issues that he raises, the court finds that the defendant is only able to attack his sentence through a motion under 28 U.S.C. § 2255. *Cf. United States v. Noske*, 235 F.3d 405, 406 (8th Cir. 2000). Accordingly, the court deems it appropriate to construe or recharacterize the defendant's motion to correct sentence as a 28 U.S.C. § 2255 motion. *See Castro v. United States*, 540 U.S. 375, 383, 124 S. Ct. 786, 792, 157 L. Ed. 2d 778 (2003) (concluding that a court may recharacterize a pro se litigant's pleading but before doing so the court "must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent [28 U.S.C.] § 2255 motion will be subject to the restrictions on 'second or successive' motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the [28 U.S.C.] § 2255 claims he believes he has"). By this order, the defendant is notified that the court intends to recharacterize his

pleading as a motion pursuant to 28 U.S.C. § 2255. *Id.* The defendant is also warned that this recharacterization means that any subsequent 28 U.S.C. § 2255 motion will be subject to the restrictions on “second or successive” motions. *Id.* Finally, the defendant is directed to either withdraw the motion to correct sentence or to amend it so that it contains all the 28 U.S.C. § 2255 claims he believes that he has by no later than December 23, 2013. *Id.*

IT IS SO ORDERED.

DATED this 22nd day of November, 2013.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA